IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WP(C).No. 33250 of 2005(G)

PETITIONER:

K. YESHODA, W/O. ONIYAN KUNHIRAMAN
MASTER (LATE), AGED 80 YEARS,
MANAGSER, ONIYAN HIGH SCHOOL,
KODIYERI, THALASSERY-670 671.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

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1. THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DISTRIT EDUCATIONAL OFFICER, TELLICHERRY, KANNUR DISTRICT.

3. THE ASSISTANT EDUCATIONAL OFFICER, THALASSERY SOUTH.

4. THE TAHSILDAR (REVENUE RECOVERY) TELLICHERRY, KANNUR DISTRICT.

5. SRI. KARUNAN, PHYSICAL EDUCATION TEACHER, (HIGH SCHOOL SECTION) ONIYAN HIGH SCHOOL, KODIYERI, THALASSERY-670 671.

BY ADV. SRI.P.RAVINDRAN
SRI.HARIKRISHNAN RAVINDRAN
SR. GOVERNMENT PLEADER SRI.R.LAKSHMI NARAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12 /12/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1 - TRUE COPY OF THE ORDER NO.K.DIS;278/87/SC OF THE SUPER CHECK OFFICER, KOZHIKODE.

EXT.P2 - TRUE COPY OF THE G.O.(RT) NO.3370/90/GE OF THE GOVERNMENT.

EXT.P3 - TRUE COPY OF THE G.O.(RT) NO.203/91/G.EDN. OF THE GOVERNMENT.

EXT.P3(a) – TRUE COPY OF THE G.O.(RT)NO.1575/04/G.EDN. OF DO.

EXT.P4 - TRUE COPY OF THE STAFF FIXATION ORDER.

EXT.P4(a) – TRUE COPY OF THE STAFF FIXATION ORDER.

EXT.P5 - TRUE COPY OF THE APPEAL FILED BEFORE THE GOVERNMENT.

EXT.P6 – TRUE COPY OF THE ORDER IN CMP NO.30249/1993 IN OP NO.16668/1993-H

EXT.P7 - TRUE COPY OF THE ORDER NO.B/2224/93 OF THE ASST.EDL.OFFICER.

EXT.P8 - TRUE COPY OF THE JUDGMENT IN O.P.NO.16668/1993.

EXT.P9 - TRUE COPY OF THE ORDER NO.B3-5724/04 OF THE DIST. EDL.OFFICER.

EXT.P10 - TRUE COPY OF THE REPRESENTATTION OF THE PETITIONER.

EXT.P11 – TRUE COPY OF THE APPEAL FILED BEFORE THE GOVERNMENT.

EXT.P12 - TRUE COPY OF THE DEMAND NOTICE OF THE 3RD RESPONDENT.

EXT.P13 - TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.26095/2005.

EXT.P14 - TRUE COPY OF THE HEARING NOTICE.

EXT.P15 - TRUE COPY OF THE G.O.(RT) NO.5227/2005/G.EDN. OF THE GOVERNMENT.

RESPONDENTS' EXTS. NIL

/TRUE COPY/

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 33250 OF 2005-G

JUDGMENT

The petitioner is the Manager of Oniyan West U.P. School and also Oniyan High School, which is having an Upper Primary Section. One Mr.P.Balan was appointed as Physical Education Teacher in Oniyan West U.P. School on 22.8.1968. He was granted full-time status by order dated 21.10.1969, by clubbing the periods in Oniyan West U.P. School with the periods in the U.P. Section of Oniyan High School. In 1987 there was some objection regarding the said clubbing at the instance of the super check cell. But, the super check cell officer dropped the objection by Ext.P1 proceedings dated 6.4.1988. As per Ext.P3 Government order dated 27.12.1991, the post of Physical Education Teacher in existence during the academic year 1990-91 was allowed to be continued for the next year also. The said benefit was extended from year to year up to 2002.

2. On 31.3.1993, the Physical Education Teacher working in the High School Wing of Oniyan High School retired from service. As per the staff fixation order Ext.P4 for the year 1992-93, the District Educational Officer ordered to accommodate Mr.P.Balan in that post, abolishing the

clubbing arrangement. The petitioner claims she has preferred Ext.P5 revision against Ext.P4 before the Government. She also appointed the 5th respondent Mr.Karunan in the vacancy created by the retirement of Mr.Padmanabhan in the High School Wing, as Physical Education Teacher. Mr.Balan was allowed to continue under the clubbing arrangement. Since the appointment of Mr.Karunan and the retention of Mr.Balan were against the staff fixation order, the Department did not release the salary for them. Therefore, they approached this Court by filing O.P.Nos.8104 and 16668/1993. This Court on 4.4.1994 passed an interim order, so as to enable Mr.Karunan and Mr.P.Balan to draw their salary. The said interim order remained in force and finally those Original Petitions were disposed of by Ext.P8 judgment dated 11.6.2003. This Court noticed that Mr.Balan retired from service and Mr.Karunan is still in service. This Court disposed of those Original Petitions with the following directions:

> "In the above circumstances, it is not necessary for this court to go into the merits of this case. The retirement benefit of Balan, petitioner in O.P.No.8104/1993 will be settled as if he worked against a regular post. In the case of K.Karunan, he will be deemed to have continued with effect from the date of joining duty pursuant to his appointment order dated 7.3.1993. However, I make it clear that if the State is of the view that it has suffered any loss consequent on any irregularity committed by the management, it will be open to the State to proceed against the management or any other erring party with notice and recover the loss."

3. Mr.Balan retired from service in 2002 and in that vacancy Mr.Karunan was accommodated. Thereafter, there was no dispute regarding the payment of salary to Mr.Karunan. In view of the observations contained in Ext.P8 judgment, the D.E.O issued Ext.P9 notice, proposing to recover the salary paid to Mr.Karunan from 7.6.1993 to 4.6.2002. The petitioner filed Ext.P10 objection and challenging Ext.P9, she filed an appeal before the Government, a copy of which is produced as Ext.P11. Pursuant to the direction of this Court in Ext.P13 judgment, the Government considered and disposed of the said appeal by Ext.P15 order dated 5.11.2005. The Government held that the appointment of Mr.Karunan, a fresh hand in the retirement vacancy in the High School is against the Rules. Therefore, the Manager, who has made the irregular appointment, is responsible for the loss sustained by the Government by way of payment of salary to the said Teacher from 7.6.1993 to 4.6.2002, the date on which the vacancy arose for accommodating Mr.Karunan. So, the Government upheld the action of the D.E.O. This writ petition was filed, mainly challenging Exts.P9 and P15. Incidentally, Ext.P12 revenue recovery notice is also challenged.

4. The learned counsel for the petitioner attacked the action taken by the D.E.O and its affirmation by the Government. The learned counsel pointed out that the salary happened to be paid to Mr.Karunan because of

the interim order of this Court, Ext.P6. The Government have not chosen to challenge that order. Further, Ext.P4 is an illegal order. By virtue of Ext.P3 and its extension from time to time, there was vacancy to accommodate Mr.Karunan as well as Mr.Balan. Further, by virtue of the proviso to Rule 6B(1) of Chapter XXIII of the K.E.R., the existing incumbents were granted protection till their retirement from service. So, Mr.Balan was entitled to get protection of that proviso, it is submitted.

5. Heard the learned Government Pleader for the official respondents, who supported the impugned orders. As long as Ext.P4 staff fixation order was there, the Manager was bound to obey the same. On the ground that she has filed a revision against it, she cannot ignore it. It is noticed that she does not have any case that her revision Ext.P5 is pending, in Ext.P10 objection or Ext.P11 appeal. Until her contentions relying on Ext.P3 and the proviso to Rule 6B(1) of Chapter XXIII are upheld by the revisional authority, the petitioner has to obey Ext.P4. In other words, the filing of a revision or for the reason that she has raised good grounds in the revision, she cannot ignore the staff fixation order. The petitioner does not have a case that that order has been stayed or modified by any competent authority. Therefore, the appointment made by her being illegal, she was responsible for causing loss to the Government. Even if the Government did not take

any steps to vacate the interim order, the same does not matter, as the final judgment permits the Government to proceed against the Manager, if there is any irregularity. The said judgment, Ext.P8 has become final also. If that be so, I find no jurisdictional error in the D.E.O issuing Ext.P9 or the Government affirming the same in Ext.P15. If those orders are valid, there is nothing wrong with the recovery steps taken as per Ext.P12. Accordingly, the Writ Petition fails and it is dismissed. The learned counsel for the petitioner prayed, the dismissal of the writ petition may not stand in the way of the petitioner moving the Government for disposal of Ext.P5. The said prayer cannot be granted, as the petitioner does not have a case either in Ext.P9 or in Ext.P11 that her revision filed before the Government in 1993 is pending even now.

12th December, 2007. **K.BALAKRISHNAN NAIR, JUDGE**.

Nm/